



MINUTES

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
11:00 a.m., Thursday, August 18, 2011
Human Resources Verde Conference Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Jeffrey Burg, Citizen Member
James Butera, Elected Member
Jeffrey Walther, Elected Member

ABSENT: Velicia McMillan, Citizen Member/Merit Head

STAFF: Colleen Barraza
Ken Nemec
Chanda Washington

OTHER: Michael Anthony, Esq.
Hanna Auckland, Esq.
Joel Friedman, Esq.
Police Officer John H. Karlik
Susan Martin
Erin Taylor
Police Officer James Powers

Call to order

Chairman Cross called the meeting to order at 11:03 a.m. He stated that the first order of business was the acknowledgement of Board Member McMillan's excused absence.

Roll call

A formal roll call confirmed the members present as stated above.

1. Review and Approval of Meeting Minutes—July 21, 2011

BOARD MEMBER BUTERA MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE JULY 21, 2011 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

2. Induction of New Scottsdale Police Officers into PSPRS

Mr. Nemec announced that there were no new Scottsdale Police Officers to induct into the PSPRS.

**3. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Lieutenant James F. Wasson**

Ms. Washington reported that Police Lieutenant James F. Wasson was entering into the DROP on July 29, 2011 with approximately 25.044 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$6,075.97.

BOARD MEMBER WALTHER MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE LIEUTENANT JAMES F. WASSON EFFECTIVE JULY 29, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

**4. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Sergeant James P. Butera**

Ms. Washington reported that Police Sergeant James P. Butera was entering into the DROP on July 16, 2011 with approximately 20.025 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$4,453.26.

Mr. Nemec noted that Board Member Butera should recuse himself from the discussion and vote on agenda item number 4.

BOARD MEMBER BURG MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE SERGEANT JAMES P. BUTERA EFFECTIVE JULY 16, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BUTERA RECUSED HIMSELF. BOARD MEMBER MCMILLAN WAS ABSENT.

**5. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Lieutenant Michael J. Stauffer**

Ms. Washington reported that Police Lieutenant Michael J. Stauffer was entering into the DROP on July 16, 2011 with approximately 20.115 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$5,111.63.

BOARD MEMBER BUTERA MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE LIEUTENANT MICHAEL J. STAUFFER EFFECTIVE JULY 16, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

**6. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Officer Shawn Twitchell**

Ms. Washington reported that Police Officer Shawn Twitchell was entering into the DROP on July 14, 2011 with approximately 25.023 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$6,125.15.

BOARD MEMBER WALTHER MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE OFFICER SHAWN TWITCHELL EFFECTIVE JULY 14, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

**7. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Officer Kevin R. Furia**

Ms. Washington reported that Police Officer Kevin R. Furia was entering into the DROP on July 28, 2011 with approximately 25.03 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$4,506.71.

BOARD MEMBER BURG MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE OFFICER KEVIN R. FURIA EFFECTIVE JULY 28, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

**8. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Application of Police Lieutenant Michael R. Anderson**

Ms. Washington reported that Police Lieutenant Michael R. Anderson was entering into the DROP on July 28, 2011 with approximately 25.03 years of service. She stated that his paperwork was in order and the monthly pension check associated with this application was \$6,306.32.

BOARD MEMBER BUTERA MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE LIEUTENANT MICHAEL R. ANDERSON EFFECTIVE JULY 28, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

**9. Discussion and Vote on the Accidental Disability Retirement Application of
Police Officer James Powers**

Mr. Nemec reported that the Board had previously authorized staff to send Police Officer James Powers for an independent medical examination that was performed on July 1, 2011. Upon receipt of the IME report staff agendaized the benefits hearing for today's meeting.

Mr. Nemec explained that Police Officer Powers subsequently requested that the hearing be continued until September or October of 2011 to allow himself and his attorney Joel Friedman time to prepare for the hearing.

Chairman Cross suggested tabling agenda item number 9 until the Board discusses item number 10.

**10. Discussion and Vote on Police Officer James Powers' request for a
Continuance of his Accidental Disability Retirement Benefits Hearing until
September or October 2011**

Mr. Anthony recommended that the Applicant and/or his attorney waive the time requirements imposed by the Fund Manager's rules and the statutes related to processing retirement applications.

Ms. Washington confirmed that Police Officer Powers had already waived the time requirements for a prior Board meeting. Mr. Friedman stated that they agreed to continue waiving the time limit.

Board Member Burg pointed out that the Applicant had also requested a closed session in order to complete the medical evidence review. Mr. Anthony explained that the medical evidence could be discussed during closed session, noting that the vote and its preceding discussion must be done during open session.

Board Member Walther suggested addressing Police Officer Powers' request that he be recused from the Board's discussion due to a conflict of interest.

CLOSED PUBLIC HEARING

11. Motion to Recess into Executive Session for Discussion of the Accidental Disability Retirement Application of Police Officer James Powers

Chairman Cross deemed it necessary to recess into Executive Session to discuss the disability retirement application of Police Officer Powers and his request that Board Member Walther recuse himself from the discussion.

BOARD MEMBER WALTHER MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE OFFICER JAMES POWERS' REQUEST TO CONTINUE HIS ACCIDENTAL DISABILITY RETIREMENT BENEFITS HEARING UNTIL SEPTEMBER OR OCTOBER OF 2011. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

Mr. Friedman stated that there would be a conflict of interest should Board Member Walther decide to testify to opinion evidence. He stated that if Board Member Walther was going to testify simply to foundation fact information, that would not create the same conflict. Chairman Cross suggested that Mr. Friedman reiterate his comment once open session has been reconvened.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

10. Discussion and Vote on Police Officer James Powers' request for a Continuance of his Accidental Disability Retirement Benefits Hearing until September or October 2011 (continued)

Chairman Cross reported that during executive session the Board discussed agenda items 9 and 10 and the letter received by staff.

In response to Chairman Cross' request for verification that the Applicant and his attorney have agreed to waive all time requirements associated with the accidental disability retirement benefits application, Mr. Friedman confirmed that they both agreed to waive the time constraints.

Board Member Walther agreed to recuse himself from any future discussion and vote on Police Officer Powers' accidental disability retirement application.

Mr. Friedman pointed out that he had a mandatory meeting in Prescott on the same day as the Board's next meeting of September 15, 2011.

BOARD MEMBER BURG MOVED TO TABLE THE ACCIDENTAL DISABILITY RETIREMENT BENEFITS HEARING OF POLICE OFFICER JAMES POWERS UNTIL THE BOARD'S NEXT MEETING OR A FUTURE DATE AGREEABLE TO THE APPLICANT. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER WALTHER RECUSED HIMSELF. BOARD MEMBER MCMILLAN WAS ABSENT.

12. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer John H. Karlik

Ms. Washington reported that after receiving Police Officer Karlik's physicians' responses to the four typical IME questions submitted by staff confirming that he was currently unable to return to work as a result of his job related injuries, the Board approved the issuance of a second IME during their June 16, 2011 meeting. Staff sent the applicant to a second IME through Medical Consultants Network on July 18, 2011.

Ms. Washington explained that the first and second IME reports were included in the Board's packet for review before voting on the Accidental Disability Retirement Application of Police Officer John H. Karlik. She pointed out that the Applicant was in attendance along with two witnesses for questioning.

Chairman Cross invited the Board to address the Applicant with any questions they might have and received no requests. He stated that on page 4 of the IME the physician's response to the four essential questions was as follows:

1. Does Mr. Karlik have a physical or mental condition which totally prevents him from performing a reasonable range of duties within the employee's job description?

"I believe that Mr. Karlik has a physical condition which in part was sustained at the time of the accident of 1989 resulting in residuals in his left upper extremity. I believe the combination of his ongoing residuals from his cervical spine problem and foot injury totally prevents him from performing a reasonable range of duties within the job description of a police officer."

2. Does Mr. Karlik have a physical or mental condition which permanently prevents him from performing a reasonable range of duties within the employee's job description?

"I believe that both his cervical spine condition and the ongoing residuals from that injury as well as the injury to his left foot will permanently prevent him from performing a reasonable range of duties within his job description."

3. Do you feel that Mr. Karlik's disabling condition or injury was incurred in the performance of Mr. Karlik's duty as a police officer?

"Yes. I believe his cervical spine injury and the associated current residuals were incurred in the automobile accident he had in 1989 while on duty."

4. Does Mr. Karlik's disability result from a physical condition or injury that existed or occurred before the claimant's date of membership in the PSPRS?

"No."

Chairman Cross inquired whether there were any comments or questions relating to the documentation provided by staff.

Mr. Anthony explained that since the second IME physician does make reference to the duty injury being responsible in part for the disability, the case law basically states that when reviewing accidental disability retirement applications with multiple causes, the duty related cause must be a substantial contributing cause.

Chairman Cross stated that when he read the IME physician's references to the residuals he got the impression that the original injury initiated the degradation which the later injuries tagged onto. He invited Mr. Friedman to comment on the discussion and he declined.

BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT HAS A PHYSICAL OR MENTAL CONDITION WHICH TOTALLY AND PERMANENTLY PREVENTS HIM FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN A POLICE OFFICER CLASSIFICATION. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABLING CONDITION WAS INCURRED IN THE PERFORMANCE OF HIS DUTIES AS A POLICE OFFICER. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABILITY DID NOT RESULT FROM A PHYSICAL OR MENTAL CONDITION OR INJURY THAT EXISTED OR OCCURRED PRIOR TO THE APPLICANT'S DATE OF MEMBERSHIP IN THE PSPRS, WHICH IS DECEMBER 8, 1986. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

BOARD MEMBER WALTHER MOVED TO APPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF POLICE OFFICER JOHN H. KARLIK SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.

CLOSED PUBLIC HEARING

13. Motion to Recess into Executive Session for Discussion of the Accidental Disability Retirement Application of Police Officer John H. Karlik

Chairman Cross deemed it unnecessary to recess into Executive Session to discuss the disability retirement application of Police Officer John H. Karlik.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

14. Report to the Board on Recently Completed Transfers of Prior Service Credits

Ms. Washington reported that Jennifer Wattier purchased .578 years of prior service from Maricopa County Corrections by doing a rollover from her deferred compensation account. She stated that this purchase of service gave Ms. Wattier a total of four years of service with Public Safety.

Ms. Washington reported that Ronald Bayne redeemed 1.219 years of prior military service using his deferred compensation in addition to a personal check. She stated that this purchase of service gave Mr. Bayne a total of 19.575 years of service with Public Safety.

15. Board Suggestions for Upcoming Agenda Items

Chairman Cross confirmed that there were no suggestions for upcoming agenda items.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:37 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Police Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee